



PROCEDURES FOR DEFENDANTS IN CIVIL CASES



I. INTRODUCTION:

If a lawsuit has been filed against you, you should receive a summons to appear in court on a specific date. Usually a Sheriff will come to your house or place of business to serve you. The Sheriff can tape the lawsuit to your door or give it to a member of your household. It does not have to be personally delivered to you for it to be legally binding. You can also be served by a Special Process Server.

There are several ways you can be summoned to court. Each type of summons works differently, and therefore, it is very important that you read the summons carefully. The various categories of summonses are as follows:

a. Summons for Warrant in Debt, Warrant in Detinue, or Unlawful Detainer Action:

These are the names used in Virginia courts for lawsuits to recover money, suits to recover personal property, and suits to evict tenants respectively. Although the summons does not require you to appear, if you do not appear, you may forfeit your right to defend the case and the court can enter a judgment against you for the money and/or property requested. Failure to appear on an Unlawful Detainer action can result in your eviction. It is very hard to “undo” a civil judgment, therefore, it is important that you come to court if you are contesting a claim.

b. Summons to Answer Interrogatories:

This type of summons requires you to appear in court. If you do not appear, you may be fined or subject to civil arrest. This type of summons is issued after a judgment is obtained against you. You are required to answer questions, under oath, about your assets and your ability to pay the judgment.

c. Summons for a Garnishment:

After a judgment has been entered against you, a garnishment may be served on you and your employer (to garnish a portion of your wages) or your bank (to garnish your bank account). You are not required to go to court (your employer or bank is required to respond), but you may want to appear if you can claim a legal exemption from attachment. If you want to claim an exemption, you cannot just come to court on the garnishment return date; you are required to fill out an exemption claim form and file it in advance of the return date with the Clerk's Office. The yellow exemption sheet served with the Garnishment Summons sets out basic instructions about rights you may have under Virginia law.

II. RETURN DATE:

The return date is the date listed on your summons. The return date is not the trial of the case. It is simply an opportunity for you to either inform the Court that you want to contest the action and schedule the case for trial or admit the claim filed against you. The Return Date Docket is called in Courtroom 2A at 9:30 a.m. You should plan to arrive earlier since there is often a line waiting to enter Public Parking Garage B, located on Page Avenue, near the Courthouse. Before entering Courtroom 2A, you should check the Civil Docket monitors that are on the wall between Courtrooms 2A and 2B. Names of plaintiffs and defendants who have cases in Civil Court that day will be listed alphabetically on the monitors. The courtroom assignment is also listed beside each name.

When your case is called, and the plaintiff is present, you must inform the Court as to whether you admit or deny the plaintiff's claim. If you admit the claim, judgment will be entered against you. If the plaintiff is not present, you may ask the Court to dismiss the action that has been filed against you.

If you deny the claim, then a trial date will be set. You may ask that the plaintiff file a document called a Bill of Particulars. This document will require the plaintiff to explain in greater detail why you are being sued and the nature of the claim against you. The judge will set the date the Bill of Particulars is due. Plaintiff must send an original to the court and mail you a copy. If the plaintiff fails to file this document on time with the court and with you, you may ask that judgment be awarded in your favor.

The plaintiff has the right to request that you file a document called an Answer and Grounds of Defense. This document is a written explanation of why you dispute, in whole or part, the action filed against you. The judge will set the date the Answer and Grounds of Defense is due. You must file a copy of your Answer and Grounds of Defense with the court and mail a copy to the plaintiff. If you do not file this document or if you do not file this document on time, the plaintiff can ask that judgment be awarded in his favor.

If you have a legally valid reason for not appearing in court on the return date and you want to contest the case, you should request a continuance. **A Request for Continuance** should be in writing, stating clearly why you cannot appear, and specifying another date when you can appear. The request should also state if you are contesting the matter. It may be helpful if you call or notify the plaintiff in advance that you will be requesting a continuance. If you have an emergency the morning of the court appearance, you should call the Clerk's Office between 8:00 - 9:00 a.m. at (703)246-3012. However, continuances are not automatically granted, and are frequently denied if the case is already set for trial. It is your responsibility to call back to the Clerk's Office to see if your case was continued and, if so, to what date. Court dates are also available on-line at the Web site: www.courts.state.va.us. Under Case Status and Information, select General District Court. Use the drop down menu to highlight Fairfax County, follow the prompts, and click on Civil to bring up case information.

III. HIRING AN ATTORNEY:

If you do not feel comfortable defending yourself, you can hire an attorney or locate an attorney familiar with Fairfax County General District Court practice by calling the Lawyer Referral Service at (703) 246-3780. For a small fee, an attorney will meet with you for a half hour to discuss your case, and may agree to represent you if you choose to retain her or him. **Corporations must be represented by an attorney at trial, in most instances.**

If you have a limited income, you might be eligible for assistance from the Fairfax Office of Legal Services of Northern Virginia at (703) 246-4500. They have an office in the Courthouse in Room 213.1, located just outside of Courtroom 2A.

IV. TRIAL:

To prepare for trial in the General District Court, you may want to have witnesses ordered to appear in court to testify on your behalf. You will need to fill out a witness subpoena form, which you can obtain at the Clerk's Office in Room 211. You should file this form with the Clerk's Office at least 10 days before the trial. The Clerk's Office can also issue a subpoena for documents, which is called a Subpoena Duces Tecum. This form should be filed at least 15 days before trial.

Civil trials are called beginning promptly at 9:30 a.m. in Courtroom 2B. The judge will call the docket of all the cases set for trial that day. When your case is called, the judge wants to know whether you are present and how much time you think you need to present your defense. The judge will then determine in what order the cases will be called for trial.

When your case is called, you usually sit at the table on the judge's right and the plaintiff usually sits at the table on the judge's left. You should stand when addressing the judge unless told otherwise. Plaintiff will present his case first (including the testimony of any witnesses) and then you will put on your defense. You may cross-examine the plaintiff's witnesses if necessary. The plaintiff may also cross-examine your witnesses. Usually, the judge will make a ruling at the end of the trial.

V. APPEAL:

If you do not win the case and a judgment is entered against you, you may appeal the case to the Circuit Court. This may be very expensive and time limits are very strict. Appeals must be noted **in writing** within ten calendar days (see the clerk for the DC-475 form, Notice of Appeal) and must be perfected within thirty calendar days from the date of the judgment by paying the writ tax, notice fee, and posting any required bond. Bond is usually set for the amount of the judgment and costs (plus up to one year's future rent on Unlawful Detainer cases). **Note that in an Unlawful Detainer action, the Bond, Writ Tax, and Notice Fee must be posted within ten days of judgment.** Appeal Bonds must be posted by means of cash, postal money order, corporate surety, or an attorney's check written from an escrow account. A certified or cashier's bank check payable to the Circuit Court of Fairfax County is also acceptable. If you have a limited income you can apply to waive payment of the Appeal Bond, Writ Tax and Notice Fee. The plaintiff has the same right of appeal.

VI. MOTION TO REHEAR:

You may file a written application called a Motion to Rehear with the Civil Clerk's Office if a judgment has been entered against you and you have a valid legal reason why the case should be reopened. Motions to Rehear are rarely granted and must be filed within 30 days after judgment has been entered and heard with 45 days after judgment. A Motion to Rehear does not take the place of an appeal, therefore, if an appeal is desired it must be noted within the specified time.

VII. PAYING THE JUDGMENT:

If you cannot pay the judgment right away, you may want to work out a payment plan with the plaintiff. Otherwise, the plaintiff is entitled to attach your property and assets to satisfy the judgment. If the judgment is based on damages resulting from a motor vehicle accident, the plaintiff can take steps to have your driver's license suspended until the judgment is paid. An unsatisfied judgment may also negatively affect your credit rating.

Once the judgment has been paid, the plaintiff is required by law to notify the court within 30 days of payment so the case can be marked as satisfied. You should request a copy of this notice from the plaintiff and check with the court to ensure that your judgment has been marked as satisfied.

Prepared by:

***Fairfax Bar Association
4110 Chain Bridge Road
Fairfax, VA 22030
(703) 246-2740***

Fairfax County General District Court
Civil Division, Room 211
4110 Chain Bridge Road
Fairfax, Virginia 22030
Phone: 703-246-3012
TTY, for hearing impaired only: 711

www.fairfaxcounty.gov/courts/gendist

or

www.courts.state.va.us



For reasonable ADA accommodations or an alternate format, please contact 703-246-2153.

A Fairfax County, VA publication

Revised 3/12